FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 93/2007
(*Vitthal Yadavrao Hatwar* **VERSUS** *Nagpur Improvement Trust, through its Chairman & 3 others***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Sarda, Adv. For the appellant.
Shri Sambre, Adv. For the respondents1 & 2.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 9th July, 2007.

Heard the learned counsel for the parties.

The appellant is the original plaintiff. A suit was filed by the plaintiff against defendant Nagpur Improvement Trust as the Nagpur Improvement Trust has issued a notice to the plaintiff under Section 90 of the Nagpur Improvement Trust calling upon the plaintiff to remove the encroachment on the suit plot. According to the plaintiff, the notice was illegal, as the plaintiff was the owner of the suit plot. The plaintiff pleaded that his father had purchased the suit plot in the year 1951 by a registered sale-deed. The plaintiff's claimed to be in possession of the suit property for more than 40 years, and therefore, also claimed title to the suit property by adverse possession. Consequently, the plaintiffs sought a declaration that they are the owners of suit plot and the notice dated 12.03.1992 is illegal.

The defendant resisted the claim of the plaintiff

and stated that certain lands were acquired by the Nagpur Improvement Trust for the purpose of some scheme. The plot belonging to the father of the plaintiff was one of the plots which were acquired by the Nagpur Improvement Trust. The land acquisition proceedings were initiated much prior to the institution of the suit and the award was also passed in the year 1984. The defendant claimed to have taken the possession of the suit property after the passing of the award, and therefore, the defendant pleaded that there was necessity to issue the notice dated 12.03.1992 directing the plaintiff to remove the encroachment on the suit property.

The trial as well as the appellate Court, on a proper appreciation of the material evidence on record dismissed the suit filed by the plaintiff. According to the Courts, the plaintiff had not proved that they were the owners of the suit property. The Courts held that the plaintiff had not filed any document on record to prove their ownership. The Courts further held that the Akhiv Patrika and other revenue record was not sufficient for conferring the title at the time of institution of the suit. The Courts heavily relied on the copies of the award passed in the land acquisition proceedings as well as possession receipts which were produced by the defendant on record to show that the

plaintiffs had handed over the possession of the suit property to the defendant after the award was passed.

The findings recorded by both the Courts do not give rise to any substantial question of law. The plaintiffs had not produced the document of title before the trial Court. Though a feeble attempt was made by the plaintiff to produce additional evidence on record at the appellate stage, the appellate court, rejected the application on the ground that the plaintiffs desired to have a second innings by filing documents at the appellate stage. The appellate Court held that there was no justification whatsoever to accept additional evidence at the appellate stage. The Courts have rightly held that the entries in the revenue record or the Akhiv Patrika are not the documents of title and could not have proved the title of the plaintiffs at the time of institution of the suit. The submission made on behalf of the appellant that the xerox copies of the possession receipt and the award were not admissible in evidence also cannot be accepted because the award as well as the possession receipts were public documents within the meaning of Section 74 of the Evidence Act and secondary evidence could be produced in cace of such documents. It is noteworthy that the witness examined on behalf of the

Nagpur Improvement Trust had produced the originals before the trial Court at the time of tendering his evidence and the xerox copies were compared with the original and then marked as exhibits. The Courts, therefore, in the aforesaid backdrop, held that the plaintiff had failed to prove ownership on the suit property as the land was acquired by the Nagpur Improvement Trust in the year 1984 and the award was passed in the year 1984. The Courts further held on the basis of the possession receipt that the possession of the plot was handed over to the Nagpur Improvement Trust and the plaintiff had failed to prove his title or possession over the suit property at the time of the institution of the suit.

The findings recorded by both the Courts are pure findings of facts based on the proper appreciation of the material evidence on record. The findings do not give rise to any substantial question of law.

The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE